IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 22 OF 2003.

1. Melvin Vaz,
   r/o H. No. 2,
   Karaswado, Mapusa.
2. Amit Naik,
   r/o Marial Wado,
   Moira. ... Applicants.

Versus

State. ... Respondent.

Mr. V.s. Goltekar, Advocate for the Applicants.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent State.

Coram : P.V. HARDAS, J.

Date : 4th September 2003.

ORAL JUDGMENT.

The applicants, who have been convicted by the Judicial Magistrate, First Class, Mapusa, for an offence punishable under Section 353 read with Section 34 of the Indian Penal Code and sentenced to 15 days simple imprisonment and fine of Rs. 500/- each, by Judgment, dated 29th January 2002, in Criminal Case No. 84/01/Jr., confirmed by the IInd Additional Sessions Judge, Panaji, in Criminal Appeal No. 14 of 2002, vide Judgment, dated 20th May 2003, have filed the present revision assailing their conviction and sentence.

2. The prosecution case is that, on 1st December 2000, at about 10.45 a.m., P.W.2 Miran D'Souza was a Home Guard working in the traffic cell of Mapusa Police

Station. According to P.W.2 Miran, one person came and took out a Bajaj Scooter from the parking area and, on so doing, parked another scooter in the middle of the road. After parking the scooter in the middle of the road, he started proceeding further. However, people obstructed him. P.W.2 Miran requested the said person to remove the scooter which was parked in the middle of the road. The said person refused to do so. The applicants came to the scene of offence and questioned P.W.2 Miran whether he considered himself to be a policeman. Both the applicants are alleged to have slapped P.W.2 Miran. One Chandrakant Gawas intervened. The applicants/accused were brought to the police station and, thereafter, a complaint, at Exhibit P.W.2/A, came to be filed by P.W.2 Miran. P.W.3 Chandrakant Gawas states that he was informed that a Home Guard had been assaulted at the fish market and, therefore, immediately in the company of P.W.4 Narayan Salonki went to the scene of offence. He states that when he went there he saw accused nos. 1 and 2 slapping P.W.2 Miran. He separated the accused and informed the police about the incident. The accused were taken in the jeep to the police station.

3. P.W.4 Narayan states that he had gone to the scene of offence alongwith P.W.3 Chandrakant and had seen the accused slapping the complainant. The accused

were separated and taken to the police station in the police jeep. P.W.5 Roby Fernandes also states that he had seen the accused slapping the complainant. Thereafter he corrected himself to say that he had not seen the accused slapping the complainant, but had been informed by P.W.2 Miran that the accused had slapped him. He states after some time P.W.3 Chandrakant and P.W.4 Narayan also came to the scene.

4. P.W.2 Miran was examined by P.W.6 Dr. Mallika Patel, who did not notice any external injury. The investigation was carried out by P.W.7 P.S.I. J. Naik, who has admitted in the cross-examination that he had not recorded the statement of the scooterist, who had kept the scooter on the road.

5. The learned trial Court, on consideration of the evidence adduced by the prosecution, convicted and sentenced the applicants/accused as aforestated. On an appeal being filed by the applicants/accused, the learned IInd Additional Sessions Judge, by his Judgment, dated 20th May 2003, dismissed the appeal and confirmed the conviction and sentence.

6. The learned counsel appearing on behalf of the applicants has urged before me that from the evidence on record, the involvement of the applicants/accused is not

established beyond reasonable doubt. The two Courts below have appreciated and have come to a finding that the applicants/accused had slapped the complainant/P.W.2 Miran. It is true that the evidence of P.W.5 Roby reveals that P.W.3 Chandrakant and P.W.4 Narayan had reached the scene of offence after the incident of slapping and, therefore, could not be eye witnesses. However, the evidence of the complainant/P.W.2 Miran is clear that the applicants/accused had slapped P.W.2 Miran. P.W.2 Miran has admitted in his cross-examination that the uniform of the traffic police is white shirt and blue pant and his uniform was of khaki colour. The applicants/accused are stated to be drivers, who appear to have intervened in a quarrel between the scooterist and the police. In such circumstances, according to me, the sentence of 15 days simple imprisonment is extremely harsh. The sentence of fine imposed by the learned trial Court is sufficient to meet the ends of justice.

7. Accordingly, the Criminal Revision Application is partly allowed. The conviction of the applicants/accused for an offence punishable under Section 353 of the Indian Penal Code is maintained. The sentence of fine of Rs. 500/- each is also maintained, while the sentence of simple imprisonment of 15 days is

quashed and set aside.

(P.V. HARDAS)
JUDGE.

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